



# **CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT LAW**



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## CIGARETTE AND TOBACCO PRODUCTS LICENSING ACT OF 2003 \*

(Division 8.6 of the Business and Professions Code)

Enacted Statutes 2003, Chapter 890 (AB 71), in effect January 1, 2004

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|------------|--|--------------------|
| Chapter 1. | General Provisions and Definitions.  | §§ 22970–22971.4   |
| 2.         | License for Retailers of Cigarettes and Tobacco Products.                    | §§ 22972–22974.8   |
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### CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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| § 22970.   | Title.                                       |
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| § 22971.4. | Constitutional exemption.                    |

**22970. Title.** This division shall be known as and may be cited as the Cigarette and Tobacco Products Licensing Act of 2003.

**22970.1. Legislative findings and declarations.** The Legislature finds and declares all of the following:

(a) The State of California has enacted excise taxes on the distribution of cigarettes and tobacco products to provide funding for local and state programs, including health services, antismoking campaigns, cancer research, and education programs.

(b) Tax revenues have declined by hundreds of millions of dollars per year due, in part, to unlawful distributions and untaxed sales of cigarettes and tobacco products conducted by organized crime syndicates, street gangs, and international terrorist groups.

(c) The enforcement of California's cigarette and tobacco products tax laws is necessary to collect millions of dollars in lost tax revenues each year.

(d) The licensing of manufacturers, importers, wholesalers, distributors, and retailers will help stem the tide of untaxed distributions and illegal sales of cigarettes and tobacco products.

\* **Note.**—SEC. 21. of Stats. 2003, Ch. 890 (AB 71), effective January 1, 2004, states, Nothing in this act preempts or supersedes any local tobacco control law or ordinance other than those laws or ordinances that are related to the collection of state taxes. Local licensing laws or ordinances may provide for the suspension or revocation of licenses issued by a local government or agency for a violation of the laws imposed under the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code).

**Note.**—SEC. 22. of Stats. 2003, Ch. 890 (AB 71), effective January 1, 2004, states, All revenues and expenses generated by this act with respect to the taxes imposed under the Cigarette and Tobacco Products Tax Law (Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code), shall be allocated in the same manner as those revenues and expenses are allocated under the Cigarette and Tobacco Products Tax Law as that law read on the effective date of this act.

22970.2. **Administration.** The board shall administer a statewide program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products.

22970.3. **Tobacco Tax Compliance Task Force.** The board may create a Tobacco Tax Compliance Task Force for the purpose of advising the board on cigarette and tobacco products tax compliance issues that may include, but not be limited to, representatives from the following:

- (a) The board.
- (b) The office of the Attorney General.
- (c) The Franchise Tax Board.
- (d) The Department of Alcoholic Beverage Control.
- (e) The State Department of Health Services.
- (f) Federal agencies necessary to coordinate programs to combat tobacco tax evasion, smuggling, and counterfeiting.
- (g) One person from each of the categories of persons required by this division to have a license.
- (h) Other states engaged in tobacco tax compliance efforts.
- (i) Local law enforcement agencies.

*Text of section operative through April 30, 2007*

22971. **Definitions.** For purposes of this division, the following terms shall have the following meanings:

- (a) “Board” means the State Board of Equalization.
- (b) “Importer” means an importer as defined in Section 30019 of the Revenue and Taxation Code.
- (c) “Distributor” means a distributor as defined in Section 30011 of the Revenue and Taxation Code.
- (d) “Manufacturer” means a manufacturer of cigarettes sold in this state.
- (e) “Retailer” means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.
- (f) “Retail location” means both of the following:
  - (1) Any building from which cigarettes or tobacco products are sold at retail.
  - (2) A vending machine.
- (g) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.
- (h) “Cigarette” means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.
- (i) “License” means a license issued by the board pursuant to this division.

(j) “Licensee” means any person holding a license issued by the board pursuant to this division.

(k) “Sale” or “sold” means a sale as defined in Section 30006 of the Revenue and Taxation Code.

(l) “Tobacco products” means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.

(m) “Unstamped package of cigarettes” means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked “Not for sale in the United States.”

(n) “Person” means a person as defined in Section 30010 of the Revenue and Taxation Code.

(o) “Package of cigarettes” means a package as defined in Section 30015 of the Revenue and Taxation Code.

(p) (1) “Control” or “controlling” means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) “Law enforcement agency” means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

(r) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, substituted “purposes” for “purpose” in the first paragraph, and added subdivision (r).

*Text of section operative May 1, 2007*

22971. **Definitions.** For purposes of this division, the following terms shall have the following meanings:

- (a) “Board” means the State Board of Equalization.
- (b) “Importer” means an importer as defined in Section 30019 of the Revenue and Taxation Code.
- (c) “Distributor” means a distributor as defined in Section 30011 of the Revenue and Taxation Code.
- (d) “Manufacturer” means a manufacturer of cigarettes or tobacco products sold in this state.
- (e) “Retailer” means a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state.
- (f) “Retail location” means both of the following:
  - (1) Any building from which cigarettes or tobacco products are sold at retail.
  - (2) A vending machine.
- (g) “Wholesaler” means a wholesaler as defined in Section 30016 of the Revenue and Taxation Code.
- (h) “Cigarette” means a cigarette as defined in Section 30003 of the Revenue and Taxation Code.
- (i) “License” means a license issued by the board pursuant to this division.
- (j) “Licensee” means any person holding a license issued by the board pursuant to this division.
- (k) “Sale” or “sold” means a sale as defined in Section 30006 of the Revenue and Taxation Code.
- (l) “Tobacco products” means tobacco products as defined in subdivision (b) of Section 30121 and subdivision (b) of Section 30131.1 of the Revenue and Taxation Code.
- (m) “Unstamped package of cigarettes” means a package of cigarettes that does not bear a tax stamp as required under Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, including a package of cigarettes that bears a tax stamp of another state or taxing jurisdiction, a package of cigarettes that bears a counterfeit tax stamp, or a stamped or unstamped package of cigarettes that is marked “Not for sale in the United States.”
- (n) “Person” means a person as defined in Section 30010 of the Revenue and Taxation Code.
- (o) “Package of cigarettes” means a package as defined in Section 30015 of the Revenue and Taxation Code.



(p) (1) “Control” or “controlling” means possession, direct or indirect, of the power:

(A) To vote 25 percent or more of any class of the voting securities issued by a person.

(B) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise provided; however, no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

(2) For purposes of subparagraph (B) of this subdivision, a person who, directly or indirectly, owns, controls, holds, with the power to vote, or holds proxies representing 10 percent or more of the then outstanding voting securities issued by another person, is presumed to control such other person.

(3) For purposes of this division, the board may determine whether a person in fact controls another person.

(q) “Law enforcement agency” means a sheriff, a police department, or a city, county, or city and county agency or department designated by the governing body of that agency to enforce this chapter or to enforce local smoking and tobacco ordinances and regulations.

(r) “Brand family” has the same meaning as that term is defined in paragraph (2) of subdivision (a) of Section 30165.1 of the Revenue and Taxation Code.

(s) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, substituted “purposes” for “purpose” in the first paragraph, and added subdivision (r). Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, but operative May 1, 2007, added “or tobacco products” after “manufacturer of cigarettes” in subdivision (d) and added subdivision (s).

**22971.1. Performance audit.** Commencing January 1, 2006, the Bureau of State Audits shall conduct a performance audit of the licensing and enforcement provisions of this division, and shall report its findings to the board and the Legislature by July 1, 2006. The report shall include, but not be limited to:

- (a) The actual costs of the program.
- (b) The level of additional revenue generated by the program compared to the period before its implementation.
- (c) Tax compliance rates.
- (d) The costs of enforcement at the varying levels.
- (e) The appropriateness of penalties assessed in this division.
- (f) The overall effectiveness of enforcement programs.

**22971.2. Enforcement by Board; rules and regulations.** The board shall administer and enforce the provisions of this division and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this division.

22971.3. **Local preemption.** Nothing in this division preempts or supersedes any local tobacco control law other than those related to the collection of state taxes. Local licensing laws may provide for the suspension or revocation of the local license for any violation of a state tobacco control law.

22971.4. **Constitutional exemption.** No person is subject to the requirements of this division if that person is exempt from regulation under the United States Constitution, the laws of the United States, or the California Constitution.

*History.—Added by Stats. 2004, Ch. 822 (AB 3092), in effect September 27, 2004.*

## CHAPTER 2. LICENSE FOR RETAILERS OF CIGARETTES AND TOBACCO PRODUCTS

- § 22972. Retailer license.
- § 22972.1. Temporary license.
- § 22973. Application for license.
- § 22973.1. License issuance.
- § 22973.2. License database; access.
- § 22974. Records.
- § 22974.3. Penalty for possession of unstamped cigarettes or untaxed tobacco products.
- § 22974.4. Revocation.
- § 22974.5. Penalty for failure to display license.
- § 22974.7. Penalty for violation of provisions.
- § 22974.8. Sales to minors; activation and penalties.

22972. **Retailer license.** (a) Commencing June 30, 2004, a retailer shall have in place and maintain a license to engage in the sale of cigarettes or tobacco products. A retailer that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses.

(b) The retailer shall conspicuously display the license at each retail location in a manner visible to the public.

(c) A license is not assignable or transferable. A person who obtains a license as a retailer who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the board.

(d) A license shall be valid for a 12-month period, and shall be renewed annually.

22972.1. **Temporary license.** (a) Notwithstanding Section 22972 or Section 22973, the board may issue to a retailer a temporary license with a scheduled expiration date, as determined by the board, that occurs on or before September 30, 2004.

(b) A temporary license issued pursuant to this section shall be automatically terminated upon the board's issuance of a license pursuant to Section 22973.1.

(c) A temporary license issued pursuant to this section is subject to the same suspension, revocation, and forfeiture provisions that apply to licenses issued by the board pursuant to Section 22973.1.

*History.—Added by Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004.*

22973. **Application for license.** (a) An application for a license shall be filed on or before April 15, 2004, on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant.

(2) The business name, address, and telephone number of each retail location. For applicants who control more than one retail location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office of the retailer, shall also be included on the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit number of those licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(6) The signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application. The board may issue a license without further investigation to an applicant for a retail location if the applicant holds a valid license from the Department of Alcoholic Beverage Control for that same location.

(c) The board shall provide electronic means for applicants to download and submit applications.

(d) (1) A one-time license fee of one hundred dollars (\$100) shall be submitted with each application. An applicant that owns or controls more than one retail location shall obtain a separate license for each retail location, but may submit a single application for those licenses with a one-time license fee of one hundred dollars (\$100) per location.

(2) The one-time fee required by this subdivision does not apply to an application for renewal of a license for a retail location for which the one-time license fee has already been paid. If a license is reinstated after its

expiration, the retailer, as a condition precedent to its reinstatement, shall pay a reinstatement fee of one hundred dollars (\$100).

History.—Stats. 2007, Ch. 654 (SB 625), in effect January 1, 2008, added the second sentence to paragraph (2) of subdivision (d).

**22973.1. License issuance.** (a) The board shall issue a license to a retailer upon receipt of a completed application and payment of the fees prescribed in Section 22973, unless any of the following apply:

(1) The retailer, or if the retailer is not an individual, any person controlling the retailer, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a retail location that is the same retail location as that of a retailer whose license was revoked or is subject to revocation proceedings for violation of any of the provisions of this division, unless:

(A) It has been more than five years since a previous license for the retail location was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the premises or business in an arm's length transaction. For purposes of this section, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of this division that occurred at the retail location, is presumed not to be made at "arm's length."

(3) The retailer, or if the retailer is not an individual, any person controlling the retailer, has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(4) The retailer does not possess all required permits or licenses required under the Revenue and Taxation Code.

(b) (1) Any retailer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that retailer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the retailer has so requested in the petition, shall grant the retailer an oral hearing and shall give the retailer at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the retailer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**22973.2. License database; access.** The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to retailers within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

**22974. Records.** A retailer shall retain purchase invoices that meet the requirements set forth in Section 22978.4 for all cigarettes or tobacco products the retailer purchased for a period of four years. The records shall be kept at the retail location for at least one year after the purchase. Invoices shall be made available upon request during normal business hours for review inspection and copying by the board or by a law enforcement agency. Any retailer found in violation of these requirements or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

**22974.3. Penalty for possession of unstamped cigarettes or untaxed tobacco products.** (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize unstamped packages of cigarettes at the retail, or any other person's location. Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless the cigarettes will be destroyed by that law enforcement

agency, or unless the cigarettes are otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the inventory of unstamped packages of cigarettes of a retailer or of any other person that is subject to forfeiture and seizure, the possession, storage, ownership, or retail sales of unstamped packages of cigarettes by a retailer or other person, as applicable, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars (\$1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving a seizure of a total quantity of less than 20 packages of unstamped cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) but not to exceed five thousand dollars (\$5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars (\$2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a quantity of 20 packages of unstamped cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) but not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a retailer or any other person possesses, stores, owns, or has made a retail sale of tobacco products on which tax is due but has not been paid to the board, the board or law enforcement agency is authorized to seize such tobacco products at the retail, or any other person's location. Any tobacco products seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a retailer or of any other person

until the contrary is established by a proof of payment to the board or by a purchase invoice that shows that the retailer or other person, as applicable, paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the retailer or the other person, as applicable, in possession thereof. Possession of untaxed tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the retailer or other person, as applicable, to the actions described in Section 22981.

22974.4. **Revocation.** The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any retailer or any person controlling the retailer that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

22974.5. **Penalty for failure to display license.** Any retailer who fails to display a license as required in Section 22972 shall, in addition to any other applicable penalty, be liable for a penalty of five hundred dollars (\$500).

22974.7. **Penalty for violation of provisions.** In addition to any other civil or criminal penalty provided by law, upon a finding that a retailer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the retailer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

- (1) Five times the retail value of the seized cigarettes or tobacco products.
- (2) Five thousand dollars (\$5,000).

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, added “seized” after “retail value of” in paragraph (1) of subdivision (b).

22974.8. **Sales to minors; activation and penalties.** (a) (1) The board shall take action against a retailer, convicted of a violation of either the Stake Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code, according to the schedule set forth in subdivision (b).

(2) Convictions of violations by a retailer at one retail location may not be accumulated against other locations of that same retailer.

(3) Convictions of violations accumulated against a prior retail owner at a licensed location may not be accumulated against a new retail owner at the same retail location.

(4) Prior to suspending or revoking a retailer's license to sell cigarette and tobacco products, the board shall notify the retailer. The notice shall include instructions for appealing the license suspension or revocation.

(b) (1) Upon the first conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code, the retailer shall receive a warning letter from the board that delineates the circumstances under which a retailer's license may be suspended or revoked and the amount of time the license may be suspended or revoked. The retailer and its employees shall receive training on tobacco control laws from the Department of Health Services upon a first conviction.

(2) Upon the second conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of five hundred dollars (\$500).

(3) Upon the third conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the retailer shall be subject to a fine of one thousand dollars (\$1,000).

(4) Upon the fourth to the seventh conviction of a violation of either the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 12 months, the board shall suspend the retailer's license to sell cigarette and tobacco products for 90 days.

(5) Upon the eighth conviction of a violation of the STAKE Act (Division 8.5 (commencing with Section 22950)) or Section 308 of the Penal Code within 24 months, the board shall revoke the retailer's license to sell cigarette and tobacco products.

(c) The decision of the board to suspend or revoke the retailer's license may be appealed to the board within 30 days after the notice of suspension or revocation. All appeals shall be submitted in writing.

(d) The board's authority to take action against retailers, as set forth in this section, commences on the date of the release of the results from the survey undertaken by the Department of Health Services pursuant to Section 22952 of the Business and Professions Code Section 22952 to comply with Section 1926 of Title XIX of the federal Public Health Service Act (42 U.S.C. 300x-26), and any implementing regulations adopted in relation thereto by the United States Department of Health and Human Services, showing that the youth purchase survey finds that 13 percent or more of youth were able to purchase cigarettes. The board's authority to take action under this section is inoperative on or after the date of the subsequent release of the results from the survey showing that less than 13 percent of youth were able to purchase cigarettes.



CHAPTER 3. LICENSE FOR WHOLESALERS AND  
DISTRIBUTORS OF CIGARETTES AND TOBACCO PRODUCTS

- § 22975. Wholesaler and distributor license.
- § 22976. License issuance without investigation; criteria.
- § 22977. Application for license.
- § 22977.1. License fee.
- § 22977.2. License issuance.
- § 22978. License database; access.
- § 22978.1. Purchase records.
- § 22978.2. Penalty for possession of unstamped cigarettes or untaxed tobacco products.
- § 22978.4. Invoice requirements.
- § 22978.5. Sales records.
- § 22978.6. Revocation.
- § 22978.7. Penalty for violation of provisions.
- § 22978.8. Web site posting; suspension or revocation.

**22975. Wholesaler and distributor license.** (a) In addition to licenses required pursuant to Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code, commencing June 30, 2004, every distributor and every wholesaler shall annually obtain and maintain a license to engage in the sale of cigarettes or tobacco products.

(b) Licenses shall be valid for a calendar year period upon payment of the fee prescribed in Section 22977.1, unless surrendered, suspended, or revoked prior to the end of the calendar year, and may be renewed each year upon payment of such fee.

(c) A license is not assignable or transferable. A person who obtains a license as a distributor or as a wholesaler who ceases to do business as specified in the license, or who never commenced business, or whose license is suspended or revoked, shall immediately surrender the license to the board.

**22976. License issuance without investigation; criteria.** A distributor or a wholesaler that, at the time of application, holds a valid license issued by the board pursuant to Section 30140 or 30155 of the Revenue and Taxation Code may be issued a license without further investigation.

**22977. Application for license.** (a) An application for a license shall be on a form prescribed by the board and shall include the following:

- (1) The name, address, and telephone number of the applicant.
- (2) The business name, address, and telephone number of each location where cigarettes or tobacco products will be sold. For applicants who control more than one location, an address for receipt of correspondence or notices from the board, such as a headquarters or corporate office, shall also be included in the application and listed on the license. Citations issued to licensees shall be forwarded to all addressees on the license.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to

affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) If any other licenses or permits have been issued by the board or the Department of Alcoholic Beverage Control to the applicant, the license or permit numbers for such licenses or permits then in effect.

(5) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(6) Signature of the applicant.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application.

(c) The board shall provide electronic means for applicants to download and submit applications.

22977.1. **License fee.** (a) Every distributor and every wholesaler shall file an application, as prescribed in Section 22977, on or before April 15, 2004. Each application shall be accompanied by a fee of one thousand dollars (\$1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to meeting the requirements of this section and Section 22977.2, the board shall issue a license.

(b) Every distributor and every wholesaler who commences business after the last day of May 2004, or who commences selling or distributing cigarettes or tobacco products at a new or different place of business in this state after the last day of May 2004, shall file with the board an application as prescribed in Section 22977 at least 30 days prior to commencing such business or commencing such sales or distributions; and all distributors and all wholesalers that fail to timely file an application for a license under subdivision (a) shall file with the board an application as prescribed in Section 22977. Each application shall be accompanied by a fee of one thousand dollars (\$1,000) for each location. The fee shall be for a calendar year and may not be prorated. Subject to Section 22977.2, the board, within 30 days after receipt of an application and payment of the proper fee shall issue a license.

(c) For calendar years beginning on and after January 1, 2005, every distributor and every wholesaler shall file an application for renewal of the license prescribed in Section 22977, accompanied with a fee of one thousand dollars (\$1,000) for each location where cigarettes and tobacco products are sold, in the form and manner as prescribed by the board.

22977.2. **License issuance.** (a) The board shall issue a license to a distributor or a wholesaler upon receipt of a completed application and payment of the fee prescribed in Section 22977.1, unless any of the following apply:

(1) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler, has previously been issued a license that is suspended or revoked by the board for violation of any of the provisions of this division.

(2) The application is for a license or renewal of a license for a distributor or a wholesaler, whose license is revoked or revocation is pending, unless:

(A) It has been more than five years since a distributor's or a wholesaler's previous license was revoked.

(B) The person applying for the license provides the board with documentation demonstrating that the applicant has acquired or is acquiring the business in an arm's length transaction. For purposes of this section, an "arm's length transaction" is defined as a sale in good faith and for valuable consideration that reflects the fair market value in the open market between two informed and willing parties, neither under any compulsion to participate in the transaction. A sale of the business between relatives, related companies or partners, or a sale for the primary purpose of avoiding the effect of the violations of state tobacco control laws that were committed by the distributor or wholesaler is presumed not to be made at "arm's length."

(3) The distributor or the wholesaler, or if the distributor or the wholesaler is not an individual, any person controlling the distributor or the wholesaler has been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) (1) Any distributor or any wholesaler who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that distributor or that wholesaler of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the distributor or the wholesaler has so requested in the petition, shall grant the distributor or wholesaler an oral hearing and shall give the distributor or the wholesaler at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the distributor or the wholesaler at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

**22978. License database; access.** The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board's database of licenses issued to distributors and wholesalers for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board's database shall only access and use the board's database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

**22978.1. Purchase records.** All distributors and all wholesalers shall retain purchase records that meet the requirements set forth in Section 22978.5 for all cigarettes or tobacco products purchased. The records shall be maintained for a period of one year from the date of purchase on the distributor's or the wholesaler's premises identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any distributor or any wholesaler found in violation of these requirements, or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

**22978.2. Penalty for possession of unstamped cigarettes or untaxed tobacco products.** (a) Notwithstanding any other provision of this division, upon discovery by the board or a law enforcement agency that a distributor possesses, stores, owns, or has made a sale of an unstamped package of cigarettes bearing a counterfeit California state tax stamp or that a wholesaler possesses, stores, owns, or has made a sale of an unstamped package of cigarettes, the board or the law enforcement agency shall be authorized to seize the unstamped packages of cigarettes at the distributor's or the wholesaler's location. Any cigarettes seized by a law enforcement agency shall be delivered to the board, or its designee, within seven days,

unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement investigation. Any cigarettes seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. In addition to the distributor's or wholesaler's inventory of unstamped packages of cigarettes being subject to seizure and forfeiture, the possession, storage, ownership or sale by a distributor or wholesaler of the unstamped package of cigarettes in the manner described above, shall constitute a misdemeanor punishable by the following actions:

(1) A first violation involving seizure of a total quantity of less than 20 unstamped packages of cigarettes shall be a misdemeanor punishable by a fine of one thousand dollars (\$1,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(2) A second violation within five years involving seizure of a total quantity of less than 20 unstamped packages of cigarettes shall be a misdemeanor punishable by a fine of not less than two thousand dollars (\$2,000) but not to exceed five thousand dollars (\$5,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(3) A first violation involving seizure of a total quantity of 20 unstamped packages of cigarettes or more shall be a misdemeanor punishable by a fine of two thousand dollars (\$2,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment.

(4) A second violation within five years involving seizure of a total quantity of 20 unstamped packages of cigarettes or more shall be a misdemeanor punishable by a fine of not less than five thousand dollars (\$5,000) but not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation of the license.

(b) Upon discovery by the board or a law enforcement agency that a distributor or a wholesaler possesses, stores, owns, or has made a sale of tobacco products on which tax is due but has not been paid to the board, or its designee, the board or law enforcement agency is authorized to seize such tobacco products at the distributor or wholesaler location. Any tobacco products seized by a law enforcement agency shall be delivered to the board within seven days, unless otherwise required to be used as evidence in an administrative, criminal, or civil proceeding, or as part of an ongoing law enforcement operation. Any tobacco products seized by the board or delivered to the board by a law enforcement agency shall be deemed forfeited and the board shall comply with procedures set forth in Part 13 (commencing with Section 30436) of Division 2 of Chapter 7.5 of the Revenue and Taxation Code. It shall be presumed that tax has not been paid to the board on all tobacco products in the possession of a distributor or a wholesaler until

the contrary is established by the distributor's proof of payment to the board or by a purchase invoice that shows that the wholesaler paid the tax included purchase price to a licensed distributor, wholesaler, manufacturer, or importer as described in Section 22978.4. The burden of proof that tax has been paid on tobacco products shall be upon the distributor or wholesaler in possession thereof. Possession by a distributor or a wholesaler of tobacco products on which tax is due but has not been paid as required is a violation of this division and subjects the distributor or wholesaler to the actions described in Section 22981.

**22978.4. Invoice requirements.** (a) Except as otherwise provided in paragraph (7), each distributor and each wholesaler shall include the following information on each invoice for the sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the distributor or wholesaler.

(2) The license number of the distributor or the wholesaler as provided by the board.

(3) The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products.

(4) The name, address, and license number of the retailer, distributor, or wholesaler to whom cigarettes or tobacco products are sold.

(5) An itemized listing of the cigarettes or tobacco products sold.

(6) The date the cigarette or tobacco products are sold.

(7) Notwithstanding paragraph (3), a distributor that is also a retailer or manufacturer shall include either one of the following on each invoice for the sale of cigarettes or tobacco products:

(A) A statement that reads: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."

(B) The amount of excise taxes due to the board by the distributor on the distribution of cigarettes and tobacco products.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

History.—Stats. 2004, Ch. 822 (AB 3092), in effect September 27, 2004, substituted paragraph (3) of subdivision (a) for the former paragraph (3) of subdivision (a) which provided that "The amount of excise taxes due to the board by the distributor on the sale of cigarettes and tobacco products". Stats. 2005, Ch. 512 (AB 892), in effect January 1, 2006, substituted "Except as otherwise provided in paragraph (7), each" for "Each" before "distributor and each wholesaler" in subdivision (a); substituted "The amount of excise taxes . . . cigarettes and tobacco products" for "The following statement: "All California cigarette and tobacco product taxes are included in the total amount of this invoice."" in paragraph (3), and added paragraphs (6), (7), (7)(A) and (7)(B).

**22978.5. Sales records.** (a) Each distributor and each wholesaler of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past

year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a the board or a law enforcement agency.

(b) Failure of a distributor or a wholesaler to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

**22978.6. Revocation.** The board shall revoke the license, pursuant to the provisions applicable to the revocation of a license as set forth in Section 30148 of the Revenue and Taxation Code, of any distributor or any wholesaler or any person controlling any distributor or any wholesaler that has:

(a) Been convicted of a felony pursuant to Section 30473 or 30480 of the Revenue and Taxation Code.

(b) Had any permit or license revoked under any provision of the Revenue and Taxation Code.

**22978.7. Penalty for violation of provisions.** In addition to any other civil or criminal penalty provided by law, upon a finding that any distributor or any wholesaler has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor or the wholesaler pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

- (1) Five times the retail value of the seized cigarettes or tobacco products.
- (2) Five thousand dollars (\$5,000).

**History.—Stats. 2005, Ch. 512 (AB 892), in effect January 1, 2006, added “seized” after “the retail value of the” in subdivision (b)(1).**

**22978.8. Web site posting; suspension or revocation.** The board shall include on its Web site the name of any wholesaler or distributor whose license has been suspended or revoked.

**History.—Added by Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004.**

#### CHAPTER 4. LICENSE AND ADMINISTRATION FEE FOR MANUFACTURERS AND IMPORTERS

- § 22979. Cigarette manufacturer and importer license; eligibility.
- § 22979.1. Application for cigarette manufacturer and importer license.
- § 22979.2. Administration fee; cigarette manufacturer and importer.
- § 22979.3. License database; access.
- § 22979.4. Purchase records.
- § 22979.5. Sales records.
- § 22979.6. Invoice criteria.
- § 22979.7. Penalty for violation of provisions.
- § 22979.21. Tobacco products manufacturer and importer license; eligibility.
- § 22979.22. Application for tobacco products manufacturer and importer license.
- § 22979.23. License fee; tobacco products manufacturer and importer.
- § 22979.24. Tobacco products manufacturer and importer report.

**22979. Cigarette manufacturer and importer license; eligibility.**

(a) Commencing on January 1, 2004, every manufacturer and every importer, as defined in subdivision (b) of Section 22971, shall obtain and maintain a license to engage in the sale of cigarettes. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(1) Submit to the board a list of all brand families that they manufacture or import.

(2) Update the list of all brand families that they manufacture or import whenever a new or additional brand is manufactured or imported, or a listed brand is no longer manufactured or imported.

(3) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

(b) In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer that is a "tobacco product manufacturer" in subdivision (i) of Section 104556 of the Health and Safety Code, shall do all of the following in the manner specified by the board:

(1) Certify to the board that it is a "participating manufacturer" as defined in subsection II(jj) of the "Master Settlement Agreement" (MSA), or is in full compliance with paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(2) Submit to the board a list of all brand families that fit under the category applicable to the manufacturer or importer, in accordance with the following:

(A) Brand families that are to be counted, in the unit volume and market shares determined pursuant to subsections II(z) and II(mm) of the MSA and Exhibit E thereto, in calculating the manufacturer's annual payments under the MSA.

(B) Brand families that are to be counted in calculating the manufacturer's escrow deposits under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code.

(C) The manufacturer or importer shall update the list whenever a new or additional brand is manufactured or imported or a listed brand is no longer manufactured or imported.

(c) The board may not grant or permit the maintenance of a license to any manufacturer or an importer of cigarettes that does not affirmatively certify, both at the time the license is granted and annually thereafter, that all packages of cigarettes manufactured or imported by that person and distributed in this state fully comply with subdivision (b) of Section 30163 of the Revenue and Taxation Code, and that the cigarettes contained in those



packages are the subject of filed reports that fully comply with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 et seq.) for the reporting of ingredients added to cigarettes. For purposes of the federal Cigarette Labeling and Advertising Act requirement, cigars weighing three pounds or less per 1,000 are excluded from the definition of cigarette.

(d) A license issued to a manufacturer or an importer under this division is only valid with respect to the manufacturer or importer designated on the license and may not be transferred or assigned to another manufacturer or importer.

(e) Any manufacturer or importer that is issued a license under this division that does not commence business in the manner specified or designated in the license, ceases to do business in the manner specified or designated in the license, or is notified that the license is suspended or revoked, shall immediately surrender that license to the board.

(f) (1) Any manufacturer or any importer who is denied a license may petition for a redetermination of the board's denial of the license within 30 days after service upon that manufacturer or that importer of the notice of the denial of the license. If a petition for redetermination is not filed within the 30-day period, the determination of denial becomes final at the expiration of the 30-day period.

(2) Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at anytime prior to the date on which the board issues its order or decision upon the petition for redetermination.

(3) If the petition for redetermination is filed within the 30-day period, the board shall reconsider the determination of the denial and, if the manufacturer or the importer has so requested in the petition, shall grant an oral hearing and shall give the manufacturer or the importer at least 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

(4) The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

(5) Any notice required by this subdivision shall be served personally or by mail. If by mail, the notice shall be placed in a sealed envelope, with postage paid, addressed to the manufacturer or the importer at the address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, subpost office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of the delivery. Personal service to a corporation

may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, substituted “1331” for “13355a” after “Advertising Act (15 U.S.C. Sec.” in the first sentence and added the second sentence to subdivision (c); and added subdivisions (d) and (e); and relettered former subdivision (d) as (f).

**22979.1. Application for cigarette manufacturer and importer license.** (a) An application for a license by a manufacturer or by an importer shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. The business name, address, and telephone number of the corporate offices. Citations issued to licensees shall be forwarded to all addressees on the license.

(2) License number for any other valid licenses or permits issued by the board.

(3) Signature of the applicant under oath to verify application information.

(4) The name, address, and telephone number of the person designated by the manufacturer or the importer as its agent for receipt of service of process in this state.

(5) Any other information the board may require.

(b) The board may conduct an inquiry to determine whether the applicant complies with the provisions of this division.

(c) The board shall provide electronic means for applicants to download and submit applications.

**22979.2. Administration fee; cigarette manufacturer and importer.**

(a) On or before January 1, 2004, every manufacturer and every importer shall pay to the board an administration fee. The amount of the administration fee shall be one cent (\$0.01) per package of cigarettes (1) manufactured or imported by the manufacturer or the importer and (2) shipped into this state during the 2001 calendar year as reported to the board. The board shall notify each manufacturer and each importer of the amount due under this section.

(b) This section shall apply to every manufacturer and every importer required to be licensed pursuant to Section 22979. All manufacturers and all importers that may become eligible for licensure on or after December 1, 2003, shall be notified by the board of the appropriate fee due and shall pay that fee within 90 days of notification.

(c) All manufacturers and all importers that begin operations in the state after enactment of this division shall be charged a fee commensurate with their respective market share of (1) cigarettes manufactured or imported by the manufacturer or the importer and (2) sold in this state during the next calendar year as estimated by the board. The fee shall be at an amount not

less than that paid pursuant to subdivision (a) by the smallest manufacturer, but may not be more than that paid by the eighth largest manufacturer.

(d) The board shall administer this fee in accordance with the Fee Collection Procedures Law, Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

History.—Stats. 2005, Ch. 512 (AB 892), in effect January 1, 2006, added “or the importer” after “manufactured or imported by the manufacturer” in subdivision (c).

**22979.3. License database; access.** The board shall, upon request, provide to the State Department of Health Services, the office of the Attorney General, a law enforcement agency, and any agency authorized to enforce local tobacco control ordinances, access to the board’s database of licenses issued to manufacturers and importers for locations within the jurisdiction of that agency or law enforcement agency. The agencies authorized by this section to access the board’s database shall only access and use the board’s database for purposes of enforcing tobacco control laws and shall adhere to all state laws, policies, and regulations pertaining to the protection of personal information and individual privacy.

**22979.4. Purchase records.** All importers shall retain purchase records that meet the requirements set forth in Section 22979.5 for all cigarettes or tobacco products purchased and other records required by the board. The records shall be maintained for a period of one year from the date of purchase on the importer’s premises identified in the license, and thereafter, the records shall be made available for inspection by the board or a law enforcement agency for a period of four years. Any importer found in violation of these requirements, or any person who fails, refuses, or neglects to retain or make available invoices for inspection and copying in accordance with this section shall be subject to penalties pursuant to Section 22981.

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, deleted “manufacturers and” after “All” in the first sentence, deleted “manufacturer’s or” after “the date of purchase on the” in the second sentence, and deleted “manufacturer or” after “Any” in the third sentence.

**22979.5. Sales records.** (a) Each manufacturer and each importer of cigarette and tobacco products subject to licensing under this chapter shall maintain accurate and complete records relating to the sale of those products, including, but not limited to, receipts, invoices, and other records as may be required by the board, during the past four years with invoices for the past year to be maintained on the premises for which the license was issued, and shall make these records available upon request by a representative of the board or a law enforcement agency.

(b) Failure of a manufacturer or an importer to comply with this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

**22979.6. Invoice criteria.** (a) Each manufacturer and each importer shall include the following information on each invoice for the sale for distribution, wholesale, or retail sale of cigarettes or tobacco products:

(1) The name, address, and telephone number of the manufacturer, or importer.

(2) The license number of the manufacturer or importer as provided by the board.

(3) The name, address, and license number of the person to whom cigarettes or tobacco products are sold.

(4) An itemized listing of the cigarettes or tobacco products sold.

(b) Each invoice for the sale of cigarettes or tobacco products shall be legible and readable.

(c) Failure to comply with the requirements of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

**22979.7. Penalty for violation of provisions.** In addition to any other civil or criminal penalty provided by law, upon a finding that a manufacturer or importer has violated any provision of this division, the board may take the following actions:

(a) In the case of the first offense, the board may revoke or suspend the license or licenses of the manufacturer or importer pursuant to the procedures applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code.

(b) In the case of a second or any subsequent offense, in addition to the action authorized under subdivision (a), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(1) Five times the retail value of the seized cigarettes or tobacco products defined as cigarettes under this section.

(2) Five thousand dollars (\$5,000).

History.—Stats. 2005, Ch. 512 (AB 892), in effect January 1, 2006, added “seized” after “the retail value of the” in subdivision (b)(1).

**22979.21. Tobacco products manufacturer and importer license; eligibility.** Every manufacturer or importer of tobacco products shall obtain and maintain a license under this division to engage in the sale of tobacco products. In order to be eligible for obtaining and maintaining a license under this division, a manufacturer or importer shall do all of the following in the manner specified by the board:

(a) Submit to the board a list of all tobacco products they manufacture or import.

(b) Update the list of all tobacco products brands they manufacture or import whenever a new or additional brand is manufactured or imported or a listed brand is no longer manufactured or imported.

(c) Consent to jurisdiction of the California courts for the purpose of enforcement of this division and appoint a registered agent for service of process in this state and identify the registered agent to the board.

(d) The Legislature finds that solely appointing a registered agent for the purpose of service of process in this state pursuant to this subdivision does not establish a nexus with this state for tax purposes.

(e) This section shall become operative May 1, 2007.

History.—Added by Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, but operative May 1, 2007.

**22979.22. Application for tobacco products manufacturer and importer license.** (a) An application for a license by a manufacturer or by an importer of tobacco products shall be on a form prescribed by the board and shall include the following:

(1) The name, address, and telephone number of the applicant. For applicants whose corporate offices are at a separate location, the business name, address, and telephone number of the corporate office. Citations issued to licensees shall be forwarded to all addressees on the license.

(2) If any other licenses have been issued by the board to the applicant, the license or permit numbers for each license or permit then in effect.

(3) A statement by the applicant affirming that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this division or any rule of the board applicable to the applicant or pertaining to the manufacture, sale, or distribution of cigarettes or tobacco products. If the applicant is unable to affirm this statement, the application shall contain a statement by the applicant of the nature of any violation or the reasons that will prevent the applicant from complying with the requirements with respect to the statement.

(4) A statement by the applicant that the contents of the application are complete, true, and correct. Any person who signs a statement pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both imprisonment and fine.

(5) Signature of the applicant.

(6) The name, address, and telephone number of the person designated by the manufacturer or the importer as its agent for receipt of service of process in this state.

(7) Any other information the board may require.

(b) The board may investigate to determine the truthfulness and completeness of the information provided in the application.

(c) The board shall provide electronic means for applicants to download and submit applications.

History.—Added by Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, but operative May 1, 2007.

**22979.23. License fee; tobacco products manufacturer and importer.** (a) Every manufacturer or importer of chewing tobacco or snuff shall submit with each application a one-time license fee of ten thousand dollars (\$10,000).

(b) Every manufacturer or importer of tobacco products, excluding chewing tobacco or snuff, shall submit with each application a one-time license fee of two thousand dollars (\$2,000).

(c) If a manufacturer or importer is required to submit an application under, and to pay the fees required by, both subdivisions (a) and (b), the total amount of fees required to be submitted under this section shall not exceed ten thousand dollars (\$10,000).

**History.**—Added by Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, but operative May 1, 2007.

**22979.24. Tobacco products manufacturer and importer report.**

(a) Every manufacturer or importer holding a license pursuant to Section 22979.21 shall file a monthly report to the board, in a manner specified by the board, which may include, but is not limited to, electronic media. The monthly report shall include, but is not limited to, the following:

(1) A list of all distributors licensed pursuant to Section 22975 to which the manufacturer or importer shipped its tobacco products or caused its tobacco products to be shipped.

(2) The total wholesale cost of the products.

(b) The board may suspend the license or revoke the license, pursuant to the provisions applicable to the revocation of a license set forth in Section 30148 of the Revenue and Taxation Code, of any importer or any manufacturer that has failed to comply with the requirements of this section.

(c) All information and records provided to the board pursuant to subdivision (a) are confidential in nature and shall not be disclosed by the board. Information required under subdivision (a) are not public records under the California Public Records Act, as described in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code and shall not be open to public inspection.

(d) The amendments made to this section by the act adding this subdivision shall become operative May 1, 2007.

**History.**—Added by Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, but operative May 1, 2007.

**Note.**—SEC. 24 of Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, states: The Legislature finds and declares that Section 7 of this act, which amends Section 22979.24 of the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow for the State Board of Equalization to fully accomplish its goals, it is imperative to protect the interests of those persons submitting information to the board to ensure that any business or trade secrets that are required to be submitted by those persons by this act be protected as confidential information.

**CHAPTER 5. INSPECTIONS, PROHIBITIONS, AND PENALTIES**

- § 22980. Inspection authority.
- § 22980.1. Prohibitions.
- § 22980.2. Penalty for unlicensed persons.
- § 22980.3. License suspension and revocation.
- § 22981. Criminal penalties.
- § 22982. Statute of limitations.
- § 22983. Administrative provisions.

**22980. Inspection authority.** (a) (1) Any peace officer, or board employee granted limited peace officer status pursuant to paragraph (6) of subdivision (a) of Section 830.11 of the Penal Code, upon presenting

appropriate credentials, is authorized to enter any place as described in paragraph (3) and to conduct inspections in accordance with the following paragraphs, inclusive.

(2) Inspections shall be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(3) Inspections may be at any place at which cigarettes or tobacco products are sold, produced, or stored or at any site where evidence of activities involving evasion of cigarette or tobacco products tax may be discovered.

(4) Inspections shall be requested or conducted no more than once in a 24-hour period.

(b) Any person that refuses to allow an inspection shall be subject to the penalties imposed pursuant to Section 22981.

*Text of section operative through April 30, 2007*

22980.1. **Prohibitions.** (a) No manufacturer shall sell cigarettes to a distributor, wholesaler, importer, retailer, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(b) (1) Except as provided in paragraph (2), no distributor, wholesaler, or importer shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) This subdivision does not apply to any sale of cigarettes or tobacco products by a distributor, wholesaler, importer, distributor, or any other person to a retailer, wholesaler, distributor, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

(c) No retailer, distributor, wholesaler, or importer shall purchase packages of cigarettes from a manufacturer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) No retailer, distributor, wholesaler, or importer shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.

(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or

wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

History.—Stats. 2004, Ch. 822 (AB 3092), in effect September 27, 2004, renumbered former subdivision (b) as paragraph (1), added paragraph (2), and substituted “Except as provided in paragraph (2), no” for “No” before “distributor, wholesaler, or importer” in subdivision (b).

*Text of section operative May 1, 2007*

22980.1. **Prohibitions.** (a) No manufacturer or importer shall sell cigarettes or tobacco products to a distributor, wholesaler, retailer, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(b) (1) Except as provided in paragraph (2), no distributor or wholesaler shall sell cigarettes or tobacco products to a retailer, wholesaler, distributor, or any other person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) This subdivision does not apply to any sale of cigarettes or tobacco products by a distributor, wholesaler, or any other person to a retailer, wholesaler, distributor, or any other person that the state, pursuant to the United States Constitution, the laws of the United States, or the California Constitution, is prohibited from regulating.

(c) No retailer, distributor, or wholesaler shall purchase packages of cigarettes or tobacco products from a manufacturer or importer who is not licensed pursuant to this division or whose license has been suspended or revoked.

(d) (1) No retailer or wholesaler shall purchase cigarettes or tobacco products from any person who is not licensed pursuant to this division or whose license has been suspended or revoked.

(2) Notwithstanding subdivision (c), no distributor shall purchase cigarettes or tobacco products from any person who is required to be licensed pursuant to this division but who is not licensed or whose license has been suspended or revoked.

(e) Each separate sale to, or by, a retailer, wholesaler, distributor, importer, manufacturer, or any other person who is not licensed pursuant to this division shall constitute a separate violation.



(f) No manufacturer, distributor, wholesaler, or importer may sell cigarette or tobacco products to any retailer or wholesaler whose license has been suspended or revoked unless all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for cigarette or tobacco products are paid and the license of that retailer or wholesaler has been reinstated by the board. Any payment received from a retailer or wholesaler shall be credited first to the outstanding debt for cigarettes or tobacco products and must be immediately reported to the board. The board shall determine the debt status of a suspended retailer or wholesaler licensee 25 days prior to the reinstatement of the license.

(g) No importer, distributor, or wholesaler, or distributor functioning as a wholesaler, or retailer, shall purchase, obtain, or otherwise acquire any package of cigarettes to which a stamp or meter impression may not be affixed in accordance with subdivision (b) of Section 30163 of the Revenue and Taxation Code, or any cigarettes obtained from a manufacturer or importer that cannot demonstrate full compliance with all requirements of the federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 13335a et seq.) for the reporting of ingredients added to cigarettes.

(h) (1) Failure to comply with the provisions of this section shall be a misdemeanor subject to penalties pursuant to Section 22981.

(2) Notwithstanding paragraph (1), a manufacturer or importer who uses the most up-to-date licensing information provided by the board on the board's Web site to determine a person's licensing status is presumed to be in compliance with this section.

(i) The amendments that are made to this section by the act adding this subdivision shall become operative May 1, 2007.

History.—Stats. 2004, Ch. 822 (AB 3092), in effect September 27, 2004, renumbered former subdivision (b) as paragraph (1), added paragraph (2), and substituted "Except as provided in paragraph (2), no" for "No" before "distributor, wholesaler, or importer" in subdivision (b). Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007, but operative May 1, 2007, added "or importer" after "No manufacturer", added "or tobacco products" after "shall sell cigarettes", and deleted "importer," after "distributor, wholesaler," in subdivision (a); substituted "or wholesaler" for "wholesaler, or importer" after "in paragraph (2), no distributor" in paragraph (1), and deleted "importer," after "to a retailer, wholesaler," in paragraph (2), subdivision (b); substituted "or wholesaler" for "wholesaler, or importer" after "No retailer, distributor," added "or tobacco products" after "packages of cigarettes", and added "or importer" after "from a manufacturer" in subdivision (c); added paragraph designation (1) before the former sole paragraph, substituted "or wholesaler" for "distributor, wholesaler, or importer" after "No retailer," substituted "not" for "required to be" after "from any person who is", deleted "but who is not licensed" after "pursuant to this division", and added paragraph (2) to subdivision (d); added paragraph designation (1) before former sole paragraph and added paragraph (2) to subdivision (h); and added subdivision (i).

**22980.2. Penalty for unlicensed persons.** (a) A person or entity that engages in the business of selling cigarettes or tobacco products in this state without a license or after a license has been suspended or revoked, and each officer of any corporation that so engages in business, is guilty of a misdemeanor punishable as provided in Section 22981.

(b) Each day after notification by the board or by a law enforcement agency that a manufacturer, wholesaler, distributor, importer, retailer, or any other person required to be licensed under this act offers cigarette and tobacco products for sale or exchange without a valid license for the location from which they are offered for sale shall constitute a separate violation.

(c) Continued sales without a license or after a notification of suspension or revocation shall constitute a violation of Section 22981, and shall result in the seizure of all cigarettes and tobacco products in the possession of the person by the board or a law enforcement agency. Any cigarettes and tobacco products seized by the board or by a law enforcement agency shall be deemed forfeited.

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, added “the board or by” after “Each day after notification by” in subdivision (b). Stats. 2005, Ch. 512 (AB 892), in effect January 1, 2006, added “without a license or” after “Continued sales” in subdivision (c).

**22980.3. License suspension and revocation.** (a) Licenses issued pursuant to this division shall be subject to suspension or revocation for violations of the provisions of this division or the Revenue and Taxation Code as provided in this section.

(1) In addition to any applicable fines or penalties for a violation, upon first conviction of a violation, a licensee shall receive a written notice from the board detailing the suspension and revocation provisions of this act. At its discretion, the board may also suspend a license for up to 30 days.

(2) In addition to any applicable fines or penalties for a violation, upon a second conviction of a violation within four years of a previous violation the license shall be revoked.

(b) The date of the occurrence of a violation shall be used to calculate the duration between subsequent violations. A violation shall be noted in the license record at the board only after judicial conviction or final adjudication of a violation. Upon updating a record for a violation triggering a suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products.

(c) Upon notice of suspension, the board shall serve the licensee with a notice of suspension and shall order the licensee to immediately cease the sale of cigarettes or tobacco products. Continued sales after the notification of suspension shall constitute a violation of the licensing provisions of this division and shall result in the revocation of a license.

(d) Upon completion of a suspension period, a license shall be reinstated by the board upon certification that all outstanding debts of that retailer or wholesaler that are owed to a wholesaler or distributor for the purchase of cigarette and tobacco products are paid.

(e) After a revocation, a previously licensed applicant may apply for a new license after six months. The board may, at its discretion, issue a new license.

(f) Upon updating a license record for a violation, suspension, or revocation to a license of a person or entity that owns or controls more than one location, the board shall send notice in writing of the violations, suspensions, or revocations within 15 days of the board’s action to the address included in the application and listed on the license for receipt of correspondence or notices from the board.

(g) Upon suspension or revocation of a license pursuant to this section, the board shall notify all licensed distributors and wholesalers by electronic mail within 48 hours of the suspension or revocation of that license. All licensed distributors and wholesalers shall provide the board and shall update, as necessary, an electronic mail address that the board can use for purposes of making the notifications required by this subdivision.

(h) Violations by a licensee at one location may not be accumulated against other locations of that same licensee. Violations accumulated against a prior owner at a licensed location may not be accumulated against a new owner at the same licensed location.

(i) For purposes of this section, a violation includes violations of the Revenue and Taxation Code relating to cigarettes and tobacco products, and violations of this division. Only one violation per discrete action shall be counted towards a suspension or revocation of a license.

**22981. Criminal penalties.** Any violation of this division by any person, except as otherwise provided, is a misdemeanor. Each offense shall be punished by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not exceeding one year in a county jail, or both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

**22982. Statute of limitations.** Any prosecution for a violation of any of the penal provisions of this division shall be instituted within four years after the commission of the offense.

**22983. Administrative provisions.** The provisions of Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code apply with respect to the collection of the fees, civil fines, and penalties imposed pursuant to this division.

*History.—Added by Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004.*

## CHAPTER 6. DISPOSITION OF FUNDS

§ 22990. Cigarette and Tobacco Products Compliance Fund.

§ 22991. Appropriation.

**22990. Cigarette and Tobacco Products Compliance Fund.** (a) All moneys collected pursuant to this division shall be deposited in the Cigarette and Tobacco Products Compliance Fund, which is hereby created in the State Treasury. No moneys in the Cigarette and Tobacco Products Compliance Fund shall be used to supplant state or local General Fund money for any purpose.

(b) All moneys in the Cigarette and Tobacco Products Compliance Fund are available for expenditure, upon appropriation by the Legislature, solely for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003.

**22991. Appropriation.** The amount of eleven million dollars (\$11,000,000) is appropriated from the Cigarette and Tobacco Products

Compliance Fund during the 2003-04 fiscal year to the State Board of Equalization for the purpose of implementing, enforcing, and administering the California Cigarette and Tobacco Products Licensing Act of 2003, subject to the following provisions:

(a) Spending under the appropriation made by this subdivision is limited solely to revenues in the fund that are derived from fees imposed on cigarette and tobacco product manufacturers, wholesalers, distributors, importers, and retailers.

(b) Of the total amount appropriated under this subdivision, five million four hundred thousand dollars (\$5,400,000) is available for reimbursement to the Department of Justice through an interagency agreement with the board for investigation and enforcement assistance.

(c) The expenditure of any funds from the appropriation made by this subdivision shall require the prior approval of the Director of Finance. The amounts appropriated may be approved for expenditure on an allotment basis and shall be limited to the amounts necessary to carry out the operating and staffing plans for the implementation of the California Cigarette and Tobacco Products Licensing Act of 2003 as approved by the Department of Finance. The Department of Finance shall notify the Joint Legislative Budget Committee of its approval of any expenditure authorization 30 days prior to that approval.

CHAPTER 7. DURATION OF DIVISION [REPEALED.] \*

§ 22995. Repeal date. [Repealed.]

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\* Chapter 7 was repealed by Stats. 2006, Ch. 501 (AB 1749), in effect January 1, 2007.

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